

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement  
(916) 322-5662 322-5660 322-5901 322-6441

July 17, 1985

Mark C. Allen, Jr.  
Burke, Williams & Sorensen  
One Wilshire Building  
624 South Grand Avenue, 11th Floor  
Los Angeles, CA 90017

Re: Your Request for Advice  
Our File No. A-85-136

Dear Mr. Allen:

Thank you for your letter requesting advice on behalf of Gordon Siebert regarding his duties under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup>

### FACTS

Mr. Siebert has been appointed to the position of City Manager for the City of Palos Verdes Estates, effective July 1, 1985.

Prior to July 1, 1985, Mr. Siebert was employed by, and had an investment of more than \$1,000 in, Charles Abbott Associates, Inc., an engineering corporation. He terminated his employment with Charles Abbott Associates on June 30, 1985, and received all remaining income due to him (more than \$250) on that date. Mr. Siebert also received \$1,000 from Charles Abbott Associates on June 30, 1985, for the sale of his interest in the corporation. Accordingly, when Mr. Siebert assumed the office of City Manager for the City of Palos Verdes Estates, Charles Abbott Associates had provided him with income aggregating \$250 or more within the preceding 12 months. However, when he became City Manager, Mr. Siebert had no investment interest in Charles Abbott Associates, was no longer employed by the corporation, and was owed no money by the corporation. Mr. Siebert also

---

<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

Mark C. Allen, Jr.  
July 17, 1985  
Page 2

informed me in a telephone conversation that he had no expectation of renewed employment with Charles Abbott Associates when he assumed the office of City Manager.

During Mr. Siebert's employment with Charles Abbott Associates, the corporation contracted with the City of Palos Verdes Estates to provide engineering and related services to the City until December 31, 1985, when the City Council will consider renewing the contract. Ordinarily, the City Council would expect Mr. Siebert, as City Manager, to supervise the performance of Charles Abbott Associates under the contract and to recommend whether the City should renew the contract with Charles Abbott Associates.

#### QUESTION

Under the Political Reform Act, does Mr. Siebert have a conflict of interest, due to his previous connections with Charles Abbott Associates, which requires him to disqualify himself from participating in the supervision of the contract between the City of Palos Verdes Estates and Charles Abbott Associates and in the decision to renew the contract?

#### CONCLUSION

Under the Political Reform Act, Mr. Siebert's previous connections with Charles Abbott Associates do not require him to disqualify himself from participating in either the supervision of the contract between the City of Palos Verdes Estates and Charles Abbott Associates or the decision to renew that contract.

#### ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his official position to influence any governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a decision, within the meaning of Section 87100, if the decision would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on any of the following:

- (a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

\* \* \*

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

#### Section 87103.

As discussed above, Mr. Siebert has terminated his employment with Charles Abbott Associates and has also sold his interest in the corporation. Accordingly, Section 87103(a) and (d) are not applicable. However, during the preceding 12 months, Mr. Siebert has received a total of \$250 or more in income from Charles Abbott Associates, consisting of salary and the proceeds from the sale of his interest in the corporation. It is therefore necessary to discuss whether Charles Abbott Associates is considered a source of income to Mr. Siebert within the meaning of Section 87103(c).

In general, if a public official receives income totaling \$250 or more in any 12-month period from a particular source, the public official has a potentially disqualifying interest in the source of income. However, the Commission has adopted regulation 2 Cal. Adm. Code Section 18704, which provides an exception to this general rule. Regulation 2 Cal. Adm. Code Section 18704 provides:

Source of income, as used in Government Code Section 87103(c), shall not include a former employer if: All income from the employer was received by or accrued to the public official prior to the time he or she became a public official; the income was received in the normal course of the previous employment; and there was no expectation by the public official at the time he or she assumed office of renewed employment with the former employer.

Mark C. Allen, Jr.  
July 17, 1985  
Page 4

Therefore, if the conditions of 2 Cal. Adm. Code Section 18704 are met, a former employer is not considered a source of income within the meaning of Section 87103(c).

Based on the facts provided by you and Mr. Siebert, we conclude that the exception contained in 2 Cal. Adm. Code Section 18704 applies to Mr. Siebert's situation. We base this conclusion on Mr. Siebert's statements that, before assuming the office of City Manager, he terminated his employment with Charles Abbott Associates, sold his interest in the corporation, and received all income due to him, and also on his assertion that he had no expectation of renewed employment with Charles Abbott Associates when he became the City Manager. Accordingly, under the Political Reform Act, Mr. Siebert's former association with Charles Abbott Associates does not prevent him from participating, in his role as City Manager, in the supervision of the contract between the City and Charles Abbott Associates or the decision to renew that contract.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,

*Kathryn E. Donovan*

Kathryn E. Donovan  
Counsel  
Legal Division

KED:plh

LAW OFFICES  
**BURKE, WILLIAMS & SORENSEN**

ONE WILSHIRE BUILDING

624 SOUTH GRAND AVENUE, 11TH FLOOR  
LOS ANGELES, CALIFORNIA 90017

TELEPHONE: (213) 623-1900  
TELECOPIER: (213) 623-8297

TELEX: 671-1271

CABLE ADDRESS  
BWSLA UW

HARRY C. WILLIAMS  
(1912-1967)

ROYAL M. SORENSEN  
(1914-1983)

OF COUNSEL  
DWIGHT A. NEWELL  
GEORGE W. WAKEFIELD

MARTIN J. BURKE\*  
GEORGE W. TACKABURY\*  
JAMES T. BRADSHAW, JR.\*  
MARK C. ALLEN, JR.\*  
RICHARD R. TERZIAN\*  
MARTIN L. BURKE\*  
CARL K. NEWTON\*  
J. ROBERT FLANDRICK\*  
DENNIS F. BURKE\*  
LELAND C. DOLLEY\*  
COLIN LENNARD\*  
R. MICHAEL WILKINSON\*  
BRIAN J. SEERY\*  
THOMAS J. FEELEY\*  
NEIL F. YEAGER\*  
BRIAN A. PIERIK\*  
KATHERINE E. STONE\*  
CHARLES M. CALDERON\*

THOMAS H. DOWNEY  
PETER M. THORSON  
HAROLD A. BRIDGES  
CHERYL J. KANE  
RAYMOND J. FUENTES  
RONALD E. LEVINE  
CHARLES L. EDDLEMAN  
VIRGINIA R. PESOLA  
S. PAUL BRUGUERA  
MICHELE R. VADON  
B. DEREK STRAATSMAN  
NEIL C. EVANS  
SCOTT F. FIELD  
CRISTINA L. SIERRA  
JOHN W. BELCHER  
DANIEL D. LAUFENBERG  
BENJAMIN S. KAUFMAN  
MICHAEL J. LONG  
ELLEN M. BENDER

\*PROFESSIONAL CORPORATION

June 14, 1985

Fair Political Practices Commission  
1100 K Street Building  
P. O. Box 807  
Sacramento, CA 95804

Dear Sir or Madam:

Request is hereby made pursuant to the authority of Government Code Section 83114 that you issue an opinion on the following factual situation.

The City of Palos Verdes Estates is a general law city and has appointed Mr. Gordon Siebert to be its City Manager effective July 1, 1985.

Mr. Siebert is presently an owner of an interest in Charles Abbott Associates, Inc., an engineering corporation, that is worth more than \$1,000.00. Mr. Siebert is also employed by Charles Abbott Associates and has received and will receive more than \$250.00 on June 30, 1985, from Charles Abbott Associates.

Mr. Siebert presently intends to sell his interest in Charles Abbott Associates on June 30, 1985, and to terminate his employment by Charles Abbott Associates on June 30, 1985.

Charles Abbott Associates is a party to a contract with the City of Palos Verdes Estates pursuant to which Charles Abbott Associates will provide engineering and related services to the City of Palos Verdes Estates for a period extending until December 31, 1985. The City Council

would ordinarily look to its City Manager to supervise the performance of Charles Abbott Associates under the contract.

The City Council of the City of Palos Verdes Estates would ordinarily look to its City Manager for a recommendation concerning the renewal of the contract of Charles Abbott Associates upon its expiration.

Based upon the foregoing facts, the following questions are propounded:

1. May Mr. Siebert supervise the performance of Charles Abbott Associates pursuant to the contract after June 30, 1985 but before July 1, 1986?

May Mr. Siebert supervise the performance of Charles Abbott Associates pursuant to the contract after June 30, 1986?

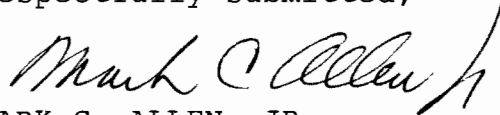
2. May Mr. Siebert recommend an extension or expansion of the contract or the terms and conditions upon which the contract might be extended or expanded after June 30, 1985 but before July 1, 1986?

May Mr. Siebert recommend an extension or expansion of the contract or the terms and conditions upon which the contract might be extended or expanded after June 30, 1986?

Request is made for written advice pursuant to subsection (b) of Government Code Section 83114.

While Mr. Siebert has no objection to an opinion pursuant to subsection (a) of Government Code Section 83114, that action is not necessary unless the Commission determines it desirable.

Respectfully submitted,



MARK C. ALLEN, JR.  
of BURKE, WILLIAMS & SORENSEN

MCA/am

cc: Mr. Gordon Siebert